

IN THE SUPREME COURT
STATE OF MICHIGAN

Appealed from the Michigan Court of Appeals

JEFFREY SOTELO, SUSAN SOTELO,
WALTER J. VANDER WALL, individually
and as Trustee and PHYLLIS A.
VANDER WALL, individually and as
Trustee,

Plaintiffs/Appellees,

v

TOWNSHIP OF GRANT,

Defendant/Appellant.

Supreme Court No. 123430

Court of Appeals
Case No. 238690

Lower Court:
Newaygo County Circuit Court
Case No. 00-018133-AW-M

123430

SUPPLEMENTAL BRIEF REGARDING
THE APPLICATION FOR LEAVE TO APPEAL

FILED

FEB 25 2004

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

Submitted by:

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STATEMENT OF JUDGMENT OR ORDER APPEALED FROM
AND RELIEF SOUGHT

For the recitation of relevant facts, please see the initial Application for Leave to Appeal and Supporting Brief submitted by Defendant/Appellant Grant Township dated March 12, 2003.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Court of Appeals improperly interpreted the Michigan Land Division Act (MCLA 560.101 *et seq.*; MSA 26.430(101) *et seq.*) when it held that “parent parcel” boundaries are not necessarily fixed as of March 31, 1997 (the effective date of the Land Division Act) and can change over time due to land transfers between parent parcels.
- II. Whether the Court of Appeals improperly applied a long-standing legal principle governing interpretation of statutes when it held that the Michigan Land Division Act is in derogation of the common law right to freely alienate real property, and as such, must be strictly and narrowly construed.

GROUND FOR APPEAL

Please see the initial Application for Leave to Appeal and Supporting Brief submitted by Defendant/Appellant Grant Township dated March 12, 2003.

I. STATEMENT OF FACTS

Please see the initial Application for Leave to Appeal and Supporting Brief submitted by Defendant/Appellant Grant Township (the "Township") dated March 12, 2003.

On January 29, 2004, this Court entered an order which provides as follows:

On order of the Court, the motion for leave to file brief amicus curiae is considered, and it is GRANTED. The application for leave to appeal the February 21, 2003 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), we direct the Clerk to schedule oral argument on whether to grant the application or take other peremptory action permitted by MCR 7.302(G)(1). The parties and amicus curiae may file supplemental briefs within 28 days of the date of this order.

The application for leave to appeal remains pending.

This supplemental brief is submitted pursuant to the Court's January 29, 2004 order. Furthermore, the Township respectfully also incorporates the contents of its earlier brief.

II. ARGUMENT

A. The General Implications of the Decision by the Michigan Court of Appeals Below

This is not simply a case which will affect interpretations of the Michigan Land Division Act (MCLA 560.101 *et seq.*; MSA 26.430(101) *et seq.*) ("the "LDA"). Rather, the published decision by the Michigan Court of Appeals in *Sotelo v Grant Township*, 255 Mich App 466; 660 NW2d 380 (2003) will, if left intact, drastically alter the way Michigan courts interpret any state legislation affecting any common law right or matter. The decision of the Court of Appeals in this case will likely have profound, significant and unintended consequences if left unchanged.

B. The Misapplication by the Court of Appeals of the Aid to Statutory Interpretation Indicating that Statutes in Derogation of the Common Law are to be Strictly and Narrowly Construed

Putting aside for a moment the issue of whether or not the Court of Appeals' interpretation of the specific LDA matter at issue in this case is correct, the Township respectfully submits that this Court should be troubled by how the Court of Appeals applied the maxim that where a statute is in derogation of the common law, that statute must be strictly and narrowly construed. The Court of Appeals stated in its published opinion below as follows:

As plaintiffs pointed out, the LDA is in derogation of the common-law right to freely alienate real property and, consequently, it is to be strictly and narrowly construed. See *Rusinek v Schultz, Snyder & Steele Lumber Co*, 411 Mich 502, 507-508; 309 NW2d 163 (1981). We will not read into the statute prohibitions on alienation not clearly supported by its language.

225 Mich App 466 at 471.¹

The rule of construction that a statute must be strictly and narrowly construed where the statute is in derogation of the common law only applies to legislation which overturns long-established common law rules or doctrine. For example, presumably the long-standing common law rule against perpetuities or the rule of joint and several liability for tortfeasors can only be overturned by a clear statutory enactment to the contrary. No long-standing common law rule or principle is applicable in the present case. *Marquis v Hartford Indemnity*, 444 Mich 638, 652-654; 513 NW2d 799 (1994).

¹ The Court of Appeals also is in error when it indicates that the LDA interferes with or "is in derogation of" the ability to freely alienate real property or that the LDA prohibits alienation—the LDA does no such thing. Rather, the relevant portion of the LDA regulates how parcels are to be created, including how many parcels can be created and what procedures must be utilized. Land owners are still free to alienate their property. The LDA no more restricts free alienation of real property than do zoning regulations, subdivision regulations, etc.

Pursuant to the view of the Court of Appeals in this case, every piece of legislation which regulates, restricts, or governs any common law right, privilege or matter would be subject to a strict and narrow construction. Given the decision of the Court of Appeals in this case below, it is difficult to envision any statute applying to individuals, corporations or any entity or association which would not be subject to a strict and narrow construction of such legislation. For example, at the common law, members of the public have the right to walk, run and traverse public trails and roads. That was a common law right. Under the view of the Court of Appeals, speed limits would have to be strictly and narrowly construed. Under the common law, individuals had broad rights to hunt game and fish. Those are common law rights. Accordingly, if the decision of the Court of Appeals is upheld in this case, presumably anti-poaching, game license and fishing laws would have to be strictly and narrowly construed. Under the common law, people had the right to build campfires on lands which they own and swim in public bodies of water – these are common law rights. If left unaltered, the decision of the Court of Appeals would make any state legislation governing fire safety or swimming subject to what amounts to something approaching strict scrutiny—that is, the statute involved would have to be strictly and narrowly construed in favor of the person who desires to engage in the regulated or proscribed activity.

Even if the interpretation maxim at issue were properly applied in the current case, the portions of the LDA at issue are not “in derogation” of the common law. This maxim of statutory construction is normally interpreted to come into play where a common law right is “extinguished”—no common law right is extinguished or obliterated in this case. Rather, a modest regulatory provision is involved.

The Court of Appeals also disregarded other important rules of statutory construction. For instance, a statute must be construed sensibly and in harmony with the legislative purpose. *In re Cameron's Estate*, 170 Mich 578; 136 NW 451 (1912); *Rusinek v Schultz Lumber Co*, 411 Mich 502, 508; 309 NW2d 163 (1981). Statutory language should also be construed reasonably. *Dep't of Social Services v Brewer*, 180 Mich App 82, 84; 446 NW2d 593 (1989). Finally, when undertaking statutory construction, a court should not abandon the canons of common sense. *Marquis v Hartford Accident & Indemnity (after remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). As discussed below, the Court of Appeals' interpretation of the portion of the LDA at issue would violate all three of these other important rules of statutory construction, since it would render relevant provisions of the LDA regarding "parent parcels" useless.

With respect to the Court of Appeals, its decision on this matter should not stand. The implications of its published opinion go way beyond the controversy in the present case.

C. The Court of Appeals Misinterpreted the Applicable Provision of the Land Division Act

Quite simply, the Court of Appeals' interpretation of the provisions of the LDA at issue (MCLA 560.102(i); MSA 26.430(102)(i) and MCLA 560.108(2); MSA 26.430 (108)(2)) obliterates such statutory provisions and renders them useless. The "parent parcel" provision is a safe harbor devise which a property owner or developer can utilize to avoid the platting process. The LDA indicates that the boundary lines of parent parcels were irrevocably set as of March 31, 1997. The decision of the Court of Appeals essentially allows parent parcels boundary lines to be varied at will and disregards the plain meaning of the

LDA provisions regarding parent parcels. Quite simply, the reasoning behind OAG 5929 and the trial court's opinion in this matter below are correct.

III. CONCLUSION AND RELIEF REQUESTED

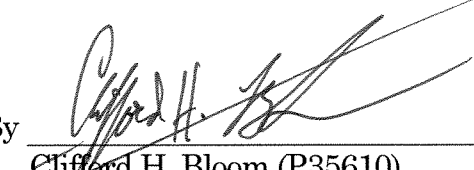
In lieu of granting leave to appeal, the Township respectfully urges this Court to summarily/peremptorily reverse the decision of the Court of Appeals and to reinstate the decision of the trial court in this matter pursuant to MCR 7.302(G)(1) .² Alternately, the Township respectfully requests that the Michigan Supreme Court grant leave to appeal in this case, and that this Court ultimately overturn the decision of the Court of Appeals and reinstate the decision of the trial court.

Respectfully submitted,

LAW, WEATHERS & RICHARDSON, P.C.

Dated: February 24, 2004

By


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² In fact, the October 30, 2001 written Opinion by the Newaygo County Circuit Court which granted summary disposition in favor of Grant Township in this matter below is a model of clarity, reasonableness and common sense. It is unfortunate that the Court of Appeals was not persuaded by the reasoning of the trial court in this matter.

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Defendant/Appellant.

Supreme Court No. 123430

Court of Appeals
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Susan V. Johnson, being sworn, states that on February 24, 2004, she mailed copies of the Defendant-Appellant's Supplemental Brief Regarding the Application for Leave to Appeal to:

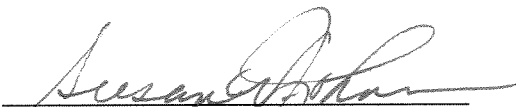
Donald R. Visser, Visser & Bolhouse, P.C., Grandville State Bank Building,
Grandville, MI 49418.

James E. Riley, Esq., Natural Resources & Environmental Quality Division
Michigan Asst. Attorney General, 300 S. Washington Square, Ste. 315, Lansing, MI
48913

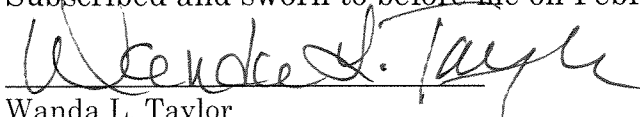
Clerk of the Michigan Court of Appeals, Hall of Justice, 925 W. Ottawa
Street, P.O. Box 30022, Lansing, MI 48909-7522

Clerk of the Newaygo County Circuit Court, 27th Judicial Circuit, P.O. Box
885, 1092 Newell, White Cloud, MI 49349

by placing the documents in the United States mail, properly addressed, with first-class postage fully prepaid.


Susan V. Johnson

Subscribed and sworn to before me on February 24, 2004


Wanda L. Taylor

Notary Public, Kent County, Michigan

My commission expires: 9-14-07
02277 (001) 225034.01

WANDA L. TAYLOR
Notary Public, Kent County, MI
My Commission Expires Sep. 14, 2007

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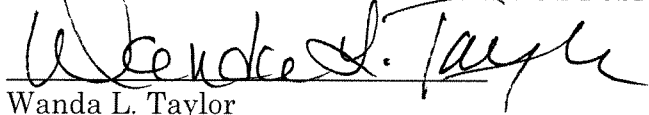
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February 24, 2004

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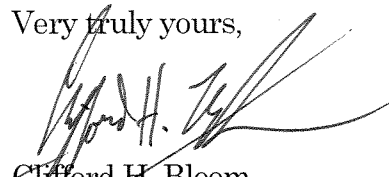
**Re: Grant Township v VanderWall, et al
Court of Appeals Case No. 238690
Newaygo County Circuit Court Case No. 00-018133-AW-M**

Dear Clerk:

Enclosed for filing is an original (unbound) and eight (8) copies of the Supplemental Brief Regarding the Application for Leave to Appeal on behalf of Grant Township, along with an original and one copy of a Proof of Service. Please return stamped copies of the documents to me in the enclosed stamped, self-addressed envelope.

Thank you for your attention to this matter.

Very truly yours,


Clifford H. Bloom
Township Attorney

sj
Enclosures
c: Donald R. Visser
James E. Riley
Stanley Van Singel
02277 (001) 225008.01

